

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

ROCKETOWN OF MIDDLE TENNESSEE, INC.)	
Map 093-10-0, Parcel 178.01)	
Map 093-10-0, Parcel 190.00)	Davidson
Map 093-10-0, Parcel 193.00)	County
Map 093-10-0, Parcel 194.00)	
Claim of Exemption)	

ORDER MODIFYING INITIAL DECISION AND ORDER
AND REMANDING FOR REPORT OF DESIGNEE

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who granted partial exemption. The appeal was heard on September 25, 2007 before Commission members Stokes (presiding), Creecy, and Gilliam.¹ Rocketown was represented by attorney Joe Gibbs, and Assistant Metro Attorney Jenny Hayes appeared on behalf of the assessor. State Board of Equalization Staff Attorney Mark Aaron participated on behalf of the Board exemption designee who made the initial determination denying exemption.

Findings of fact and conclusions of law

The subject property is a multi-use youth recreational facility. Its 40,000 square feet are spread over three venues. There is a 13,000 square foot skate park where 400-600 youth skateboard, rollerblade, or cycle each week, many at reduced charges. There is a 13,000 square foot concert area. The third area contains the Empyrean Café and administrative offices of Rocketown. The administrative judge determined the skate park to be exempt; the concert area and Empyrean Café nonexempt; and the administrative offices partially exempt.

The administrative judge found that the free Tuesday "Skate Church" Bible studies and praise services constituted exempt activity, noting that it was perhaps more successful in actively involving youth in religion than some of the more orthodox methods used in conventional churches. The administrative judge also found that the organization's claim of charitable use exemption as to

¹ Mr. Creecy and Mr. Gilliam sat as designated alternates in the absence of regular members.

skate park operations during the rest of the week was not defeated by the admission fee, since all or part of the fees were waived for those unable to pay.

However, the administrative judge denied exemption to the concert venue and Empyrean Café, taking particular exception to more professional or nationally recognized musical group concerts staged by third-party promoters, for which no fee waiver was offered. The administrative judge also took particular exception to the lease arrangement between the taxpayer and Midtown Fellowship, a local church, finding that it violated the statutory rental limit of one dollar per year plus a reasonable service and maintenance fee.

Before the Commission, the applicant characterized its use of the property as primarily charitable. Citing precedent decisions of the Board and Tennessee courts, Mr. Gibbs argued that a claim of charitable use is not defeated by the fact that some fees were charged, since no child was deprived of the benefits of the "gift" due to inability to pay. Mr. Gibbs cited a recent Tennessee Court of Appeals decision, *Youth Programs, Inc. v. State Board of Equalization*,² for the proposition that commercial aspects, such as competition, do not alone cause a property to lose its exempt status.

Having reviewed the exhibits, legal analyses, and testimony, we find and conclude that many of the activities taking place in the areas initially denied exemption do qualify as charitable exempt uses, but that others do not. We hold, therefore, that a prorated exemption is appropriate for the areas put to alternating exempt and taxable uses. We find that Rocketown is a charitable institution, and that most of its uses of the subject property are charitable. We further find that some of the uses of the property do not differ appreciably from competing commercial activities, and under applicable precedent of the Board and our courts, these uses do not qualify for exemption.

Rocketown was originally located in Cool Springs. Although it is not a church, Rocketown is organized and operated based on Christian principles that complement its charitable mission to assist disadvantaged and at-risk children to establish themselves in life. Finding a lack of "inner-city kids" and diversity in

² 170 S.W.3d 92 (Tenn. Ct. App. 2004).

Cool Springs, Rocketown strategically relocated to the subject downtown Nashville facility in order to better serve children with unmet needs. Opportunities offered by Rocketown, and not otherwise available to these troubled children, include a wide variety of activities such as Bible studies; discussion groups; art, music, and dance classes; and nonprofit music and dance performances by high school children for their peers. All of these activities involve children establishing meaningful relationships with peers and adult mentors who share interests in similar recreational pursuits in a constructive and cooperative manner.

While these activities may not, in the strictest sense, constitute education, they here appear to be age-appropriate and culturally relevant means of directly involving children in constructive personal development rather than anti-social and self-destructive behaviors that unsupervised troubled children are prone to after school hours. The large amount of public support evidenced by donations of both time and money; vigilance, supervision, and involvement of Rocketown's trained employees and volunteers in all aspects of the facility; availability of and active efforts by these employees and volunteers to serve as positive role models and mentors to the children; and cooperation with and referrals to qualified community social service organizations and churches all play parts in distinguishing Rocketown from a mere coffee shop or entertainment venue.

The fact that Rocketown charges youth who can afford its entertainment activities does not disqualify those activities for exemption. At some level, however, commercial activity undertaken incidental to exempt activity becomes taxable, as in the case of the hospital-run fitness center in *Middle Tennessee Med. Ctr. vs. Assessment Appeals Commission*.³ We find that to be the case with two of the activities at Rocketown, to wit, the skate shop and the concert area to the extent reserved for concerts brokered by third parties. There are also occasional private meetings or receptions for which a user charge is imposed, and those uses do not qualify for exemption.

³ *Middle Tennessee Med. Ctr. vs. Assessment Appeals Comm'n.*, No. 01A01-9307-CH-00324, 1994 WL 32584 (Tenn. Ct. App. Feb. 4, 1994) *perm. app. denied* May 9, 1994).

We find and conclude that the skate shop is fully taxable. According to testimony, the skate shop sells new, retail price durable goods such as skateboards, clothing, and accessories to customers who can afford them. While there was testimony that Rocketown has at times given away excess inventory to needy children, the shop is operated on a daily basis as a retail store. We find that there is no benefit not otherwise available through competing skate shops, clothing stores, accessory stores, or online vendors. We also find that the poor are effectively excluded from acquiring the goods that are sold.⁴ Further, we observe that this retail operation is, at best, a coincidental convenience to those children who can afford the goods. The skate shop cannot be fairly compared to the gift shop discussed in *Middle Tennessee Medical Center, supra*, yet it shares all of the disqualifying factors discussed regarding the fitness center's commercial operations that were denied exemption in that same case. We accordingly find that the retail sale of goods is, in this case, not directly incidental to the actual execution of Rocketown's charitable activities and that it falls outside of the statutory exemption available.⁵

We find and conclude that the third-party promoted concert events taking place in the concert area and the Empyrean Café area are taxable uses of the property. These higher-priced events are produced and brokered by for-profit entities or individuals, who collect and retain the ticket proceeds. Fee waivers are not available. While this may have tangential benefit in legitimizing Rocketown as a music venue or encouraging future visits by youth, the for-profit promoters are not exempt institutions, nor is this pure commercial fee for entertainment use charitable or otherwise exempt. Again, the poor are effectively precluded from any entertainment benefit offered during these concert events, and the use shares all of the disqualifying factors discussed regarding the commercial operations of the fitness center denied exemption in *Middle Tennessee Medical Center*.⁶ With respect to the third-party promoted concert events, we find that the commercial entertainment and profit-making by unrelated

⁴ See *Christian Home for the Aged*, 790 S.W.2d 288 at 292.

⁵ See *Book Agents*, 513 S.W.2d 514 at 523-25.

⁶ 1994 WL 32584 at 3-5.

for-profit entities is disproportionate - in terms of the duration of the concerts, the space used for the concerts, and number of persons attending the concerts - to the evangelizing and counseling taking place. In any event, the statute precludes exemption given the substance of the arrangements under *Memphis Development Foundation*.⁷ A pro rata reduction, based on a 60 hour week, should be applied to both the concert area and the Empyrean Café.

We find and conclude that the rentals for receptions, parties, and other events are taxable uses of the property. The evidence does not establish that these rentals constituted exempt activity or that they were related to the organization's exempt purposes.⁸ A pro rata reduction, based on a 60 hour week, should be applied to each area that is rented out for such events.

At the time of the hearing, we were unable to determine whether the payments under the Midtown Fellowship lease exceeded a "reasonable service and maintenance fee" under Tennessee Code Annotated § 67-5-212(a)(1)(A). If the costs identified in Collective Exhibit 6 that are associated with Midtown Fellowship's usage, less depreciation and interest, are less than the \$500 weekly charge, then a further pro rata reduction, based on a 60 hour week, should be applied to those areas occupied by Midtown Fellowship.

The administrative offices, land, and parking areas will be deemed exempt to the same extent as the combined area of the skate park and skate shop, the concert area, and the Empyrean Cafe.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is modified to provide for a partial exemption consistent with the foregoing findings. Within 10 days, counsel for Rocketown is instructed to provide to the Board exemption designee the following information:

- (1) Based on a 60 hour week, the average amount of time the concert and Empyrean Café areas are used for third-party promoter brokered concerts;

⁷ 653 S.W.2d 266 (Tenn. Ct. App. 1983) at 270.

⁸ See Tennessee Code Annotated § 67-5-212(a)(1)(A) and (a)(3)(B); *Memphis Development Foundation*, 653 S.W.2d 266 at 270.

- (2) Based on a 60 hour week, identification of each area used for receptions, parties, or other outside event rentals and the average amount of time it is so used;
- (3) Based on a 60 hour week, identification of each area occupied and used by Midtown Fellowship and the average amount of time it is so used;
- (4) An itemization and total amount of the weekly costs identified in Collective Exhibit 6 that are associated with Midtown Fellowship's usage, less depreciation and interest.

For items (1) through (3), counsel for Rocketown may use data from any time period that is representative of the average weekly usage of the facility during the pendency of the exemption application and appeal.

Within 10 days thereafter, the Board exemption designee is instructed to file a post-hearing report identifying the percentage breakdown between exempt and nonexempt portions of the property consistent with our findings, and those will be incorporated in a final decision and order to be entered hereafter. Counsel for the assessor and Rocketown may then seek reconsideration or further review as they deem appropriate.

DATED: Feb. 22, 2008

Ogden Stokes
Presiding member *by J. J. [unclear]*

ATTEST:

Kelsie Jones
Executive Secretary

cc: Mr. Joe Gibbs, Esq.
Ms. Jo Ann North, Assessor
Ms. Jenny Hayes, Metro Dept. of Law